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INTEREST OF THE AMICI CURIAE

I. FACTUAL CIRCUMSTANCES OF AMICI.

Swarb involves clauses written into consumer contracts confessing judgment thereon.[1] Amici are concerned with confessions not only in that context, but also where signed separately from the contract after an alleged default. Amici Babcock and Nunez are persons who have executed confessions of judgment in favor of a collection agency, H.P. Sears and Company, of Bakersfield, California. Amicus Sophia Babcock is a Greek immigrant who speaks broken English and reads English not at all. Her earnings as a waitress average about $45 per week.[2] The debt on which Mrs. Babcock confessed judgment was incurred by her husband long after he deserted her. It is therefore one of which California law absolves her -- although, of course, Sears' employees have never so informed her.[3] After its employees visited

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1. Hereinafter, such clauses will be described as "cognovits."

2. After the events herein related, amicus Babcock was injured in an accident as a result of which she was unable to continue work. Her sole income at this point derives from Workmen's Compensation payments.

3. "The earnings...of the wife are not liable for the debts of the husband... [except for necessities furnished him] while they are living together..." Cal.Civ.Code §5117 (emphasis added).

(Continued next page)

her home and several times called her late at night, Mrs. Babcock was persuaded to go to Sears' office. In the course of the ensuing lengthy conversation, she was presented with the confession of judgment. She was told only that this was "needed for our files" and that its execution would settle the matter so that she would receive no further phone calls. Two weeks later it was filed and judgment taken against her in the Bakersfield Municipal Court.[4]

Amicus Nunez was called to an Order of Examination[5] handled by a lay employee of H.P. Sears, who thereafter demanded that Nunez sign a confession of judgment as to several entirely unrelated debts. Since Mr. Nunez neither speaks nor reads English he was accompanied by his job counselor from the California State Department of Human Resources Development who undertook to translate the confession for him. Unable to translate it because she herself did not understand its meaning, the

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(Footnote 3 continued)

"The earnings and accumulations of the wife...while she is living separate from her husband, are the separate property of the wife." Cal.Civ.Code §5118.

4. Research by amici indicates that in the space of a 10-month period H.P. Sears and Co. filed 131 confessions of judgment in the Bakersfield Municipal Court.

5. A California post-judgment procedure whereby a court orders a judgment-debtor to appear and answer questions directed to him by the plaintiff or his representative as to income, assets, etc.

translator asked Sears' employee to explain it to her. He replied, in words or in substance, "I take the Fifth Amendment." He told Mr. Nunez that refusal to sign would result in litigation and taxation of court costs -- but did not mention that two of the three alleged debts were barred by the statute of limitations and the other was one which collection agencies are forbidden by California law to litigate.[6] Unaware of this, and unfamiliar with American law and procedure, Mr. Nunez signed the confession because (as he explained later to his attorneys) "If you go to court there is lots of trouble and you might have to go to jail." Although Mr. Nunez, who is on welfare, has been unable to pay anything on the alleged obligations -- and has been instructed by his attorneys not to do so -- the confession has never been filed.

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6. The confession signed by amicus Nunez is attached hereto as Exhibit B. The two debts in question include the bill from attorneys Donahue and Goodsell which is over three years old and two from the Kern County Hospital, one of which is over six years old.

Cal.Welf.& Inst.C. §17300 requires that county hospital bills be collected by public officials rather than referred to collection agencies. On at least twenty-five occasions attorneys for amici CRLA and/or BAKERSFIELD have interposed demurrers in cases in which H.P. Sears attempted to collect hospital debts and each such demurrer has been sustained upon Sears' failure to file a response.

Finally, under Cal.W. & I. C. §17300 only persons who were not indigent at the time the services were rendered and are not

(Continued next page)

Amici Greater Bakersfield Legal Assistance, Inc., and California Rural Legal Assistance, Inc., (hereinafter BAKERSFIELD and CRLA respectively) are legal services programs funded by the United States Office of Economic Opportunity to provide legal assistance to indigent individuals in the communities they serve. Each program has clients who have executed confessions of judgment in favor of H.P. Sears or other collection agencies. Not one such client received any explanation of its legal significance before signing the confession of judgment, nor were any of them otherwise aware of the significance of what they were signing. In many cases -- including all where H.P. Sears and Company was involved -- the signers were more or less actively misled to believe that they were merely

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(Footnote 6 continued)

now indigent are liable for county hospital bills. Moreover suit can be initiated only upon a request by the Board of Supervisors for the county counsel to do so. Thus it has been held that both indigency and the board of supervisors' request must be specifically alleged and proven before judgment can be had for a county hospital bill. Santa Barbara County v. Monical, 10 C.A.3d 249, 254, 88 C.R. 717, 720 (1970). Needless to say Mr. Nunez' confession contains none of these allegations, perhaps out of oversight, more probably because they could not truthfully be alleged. Whatever the reasons, however, the confession would clearly be legally insufficient to support a judgment -- if there were some way to bring its deficiencies to the attention of the trial court, that is.

complying with some procedural formality of the collection agency.[7]

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7. Amici Berkeley Neighborhood Legal Services, Legal Aid Society of San Mateo County, San Francisco Neighborhood Legal Assistance Foundation, Tulare County Legal Services Association, Legal Services Centers of Ventura County, Legal Aid Society of San Joaquin County and Legal Aid Society of Marin County are legal services programs funded by the Office of Economic Opportunity. Although none of them have clients who have executed confessions of judgment in favor of H.P. Sears, they join in the sentiments expressed in this brief.

II. THE LAW OF CONFESSION OF JUDGMENT IN CALIFORNIA

Although California's law of confession of judgment is conceptually identical to Pennsylvania's, the surrounding procedures are rather different. California law contains no provision requiring notice to the defendant of the entry of a judgment by confession. Only if the defendant becomes aware of its entry can he move to have it set aside, the grounds being excusable neglect, mistake or intrinsic or extrinsic fraud which prevented the presentation of a colorable defense. While at first blush this might seem a far less onerous procedure than Pennsylvania's, its practical effect is much the same, particularly for the indigent defendant. A defendant served in the normal fashion with a summons and complaint may put the matter at issue by stating his defense in a simple answer --, which he may even do orally to the clerk of the court. After judgment has been entered by confession, the defendant (even if he understood the esoteric legal principles involved) will need the aid of an attorney in drafting the papers necessary to set it aside.

California law forbids the inclusion of confessions of judgment in a number of the kinds of contracts involved in Swarb, e.g., retail installment sales,[8] loans made by personal property brokers,[9] and other loan companies.[10] (It will be remembered that the confessions of judgment signed by amici were obtained exclusive of, and after the alleged default on, the contracts involved.) On the other hand, landlords, doctors, clinics, hospitals and purveyors of many other goods and services in California are not restricted in requiring confessions in any contracts which they make.

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8. Cal.Civ.Code §§1804.1(c), 2983.7(b).

9. Cal.Fin.Code § 22009.

10. Cal.Fin.Code §§24208, 18003.

SUMMARY OF ARGUMENT

I. The right to an opportunity for a hearing is not waivable because that right is of the essence of due process and the adversary system without which a court cannot operate. A procedure which results in denial of any opportunity for a defendant to appear is so inherently subject to abuse as to be constitutionally impermissible. A waiver of procedural rights made long previous to judicial proceedings, and for reasons extraneous to those proceedings, is invalid: Courts exist to dispense justice without regard to wealth or poverty, not to effectuate the distress sale purchase of the procedural rights of the poor by the rich.

II. A confession of judgment cannot evidence a constitutionally valid waiver: (1) because defenses may have arisen since its execution which were not known and understood by the waiving party at that time; (2) because the waiving party may not have understood his extant rights and defenses at the time he executed the confession; (3) because the waiving party may not have understood what the confession was. Since the purpose of a confession is to avoid any appearance by the waiving party, confession is necessarily antithetical to the individualized scrutiny which is required to validate any waiver of appearance or counsel. Pennsylvania has adopted a procedure for accepting waivers of constitutional rights which fails to provide even minimal assurance that such waivers are knowing, understanding and voluntary.

ARGUMENT

I. THE RIGHT TO AN OPPORTUNITY TO APPEAR WHETHER FOR THE PURPOSE OF DEFENDING OR WAIVING IS SO FUNDAMENTAL TO DUE PROCESS THAT IT CANNOT BE WAIVED IN A CONFESSION OF JUDGMENT.

Courts and commentators have sometimes endorsed the sweeping statement that all constitutional rights are subject to waiver.[1] In considering such statements it is necessary to note the vast differences between the contexts in which they are generally made and the context of confession of judgment. Almost invariably, such statements appear in cases in which a criminal defendant, having acquiesced in a procedure throughout his trial, seeks to object to it after judgment has been rendered against him. Thus the waiver or waivers involved will have been made after full opportunity to appear and defend. Such waivers having been made by the defendant in person, the court will have been able to make some assessment of his English and ability to comprehend our procedures -- unlike a confession, whose signatory may be uneducated and either completely illiterate, or, like amici Babcock and Nunez, illiterate in English. Since such waivers are made in open court before a disinterested judge, there is no question of immediate coercion, mental overbearing or misleading -- unlike the signatory to a confession whose only counsel will have come from adverse parties who, by the very

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1. See e.g., 28 Am.Jur.2d 846-850, 92 C.J.S. 1066 - 1068 and cases there cited.

act of obtaining a confession, are insulating their conduct from scrutiny. Such waivers are accepted only after the defendant has received an explanation of the rights he is foregoing -- unlike a confession whose signatory may have no knowledge of his rights at the time of execution and who is waiving an opportunity to present even those defenses which arise long after signing.

Even with all the safeguards which accompany normal (i.e., non-confessional) waivers, the law, as we shall see, is extremely chary of them. Nevertheless, when all those safeguards are present, the defendant is properly precluded from tardily attacking a judgment rendered against him.

> "Any other course would not comport with the standards for the administration of criminal justice. We cannot permit an accused to elect to pursue one course at the trial and then, when that has proved to be unprofitable, to insist on appeal that the course which he rejected at the trial be reopened to him. However unwise the first choice may have been, the range of waiver is wide. Since the protection which could have been obtained was plainly waived, the accused cannot now be heard to charge

> the court with depriving him of a fair trial. The court only followed the course which he himself helped to chart and in which he acquiesced until the case was argued on appeal."[2]

Those considerations notwithstanding, it is clear that there are some rights that simply cannot be waived, even with full understanding and capacity and the advice of counsel. Perhaps the most obvious are those created by the Thirteenth Amendment. No one would seriously suggest that a creditor could enforce a contract whereby a debtor pledged himself into peonage or involuntary servitude in the event of a default. The same is true of the prohibition of cruel and unusual punishment. One might inagine a criminal defendant emphasizing his innocence and horror of the crime involved by dramatically volunteering to accept death via the auto-da-fe if convicted. But a court could not subsequently impose such a penalty on the ground that the defendant had waived the Eighth Amendment. And this Court has squarely held that there can be no waiver by failure to object, or a criminal defendant's right not to be tried under an ex post facto law. Crain v. United States, 162 U.S. 625 (1896), disapproved on other grounds Patton v. United States, 281 U.S. 276 (1936).[3]

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2. Johnson v. United States, 318 U.S. 198, 201 (1943).

3. See also Viereck v. United States, 318 U.S. 236, 248 (1943) (judge had responsibility, independent of any objection on part of defendant, to assure fair trial by rebuking prosecutor for raising ethnic prejudice in closing argument.)

In Boddie v. Connecticut, 39 U.S.L.W. 4294 (1971), this Court seems, although speaking in a very different context, to have disposed of the basic question in this case. At page 4296 of 39 U.S.L.W., the opinion distinguishes between a hearing, which can be waived, and the opportunity for a hearing, which cannot:

> "Due process does not, of course, require that the defendant in every civil case actually have a hearing on the merits. A State can, for example, enter a default judgment against a defendant who after adequate notice, fails to make a timely appearance... What the Constitution does require is 'an opportunity...' ...'for [a] hearing appropriate to the nature of the case,' Mullane v. Central Hanover Trust Co., [339 U.S. 306], at p.313. That the hearing required by due process is subject to waiver, and is not fixed in form does not affect its root requirement that an individual be given an opportunity for a hearing..."

The non-waivability of the opportunity for a hearing arises from the fact that our judicial system presupposes (and its operation is dependent upon) an adversary process, the minimum elements of which are embraced in the concept of due process of law. A court which operates without the adversary process, which operates outside the totality of concepts we call due process

of law, is a contradiction in terms -- it is not a court. As one decision puts it, a court which operates on confessions of judgment is "a slot machine,"[4] a collection bureau operating under the guise of a public agency.

The unwaivability of an opportunity to appear is in no whit inconsistent with the many cases holding that a defendant may waive a particular right or procedure even if it is inherent in due process. Whether a defendant in a particular case should exercise a particular right which in the abstract is inherent in civil or criminal due process (e.g., to take the stand in his own defense, or to cross-examine an adverse witness) is obviously a matter best left to his considered judgment. Indeed, it is probably an element of due process that the litigant be allowed to determine for himself whether the exercise of any particular right is necessary or conducive to making his case. That a man may lose a right by deliberately failing to exercise it at the appropriate time is a familiar principle in the law. Cf. Boddie v. Connecticut, supra. This is far from saying that future rights are irrevocably alienated by an act which may have been dictated by economic necessity and which, in any case, occurred long before the litigation between the parties was even contemplated. There is a basic distinction between a waiver made in open court, or after there has been the opportunity to appear, and waivers made in the

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4. Columbia Sand and Gravel Co. v. Stresbilt Tile Co., 86 Wash. (D.C.) L.R. 82, 88 (1928).

marketplace. Our Constitution reiterates King John's promise "To no one will we sell ...right or justice." Griffin v. Illinois, 351 U.S. 12, 16 (1956) (plurality opinion of Black, J.). The acceptance of waivers made in the course of litigation, in contemplation of the judicial process and for the purpose of obtaining some advantage therein, does not breach that promise. But surely a court is selling justice when it accepts a waiver made in the marketplace for the purposes of the marketplace -- a waiver obtained as part of the price of the goods or an opportunity to redeem a default. A simple illustration will suffice: Could any court properly give recognition to a provision in a consumer contract that, in the event of litigation, the buyer may not cross-examine the witnesses presented by the seller? Obviously not, for, unlike the marketplace, access to the essentials of justice is not determined by the respective capital accumulations of the parties. Courts exist to dispense justice without regard to wealth or poverty, not to effectuate the distress sale purchase by the rich of the procedural due process rights of the poor.

The many cases holding that a criminal defendant may, at time of trial and after full opportunity for advice of counsel, forego any of his procedural due process rights do not support the proposition

that a defendant may forego the adversary process itself by confessing judgment.5

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5. The language of the Court of Appeals for the Ninth Circuit in Simon v. United States, 119 F.2d 539 (1941) seems pertinent;

> "Defendant urges, however, that he has not been accorded due process. As we have said above, the jurisdiction of the court to try the case is subject to the controlling provisions of the Constitution. The Fifth Amendment to the Constitution provides that no person shall be deprived of life, liberty, or property, without due process of law. We take it that any waiver of the defendant would be ineffectual if it went so far as to deny him due process of law.
>
> "Due process of law in a criminal proceeding has been defined as consisting of 'a law creating or defining the offense, an impartial tribunal of competent jurisdiction, accusation in due form, notice and opportunity to defend, trial according to established procedure and discharge unless found guilty.'" See §579, p. 1171, and cases cited.

Again a simple illustration will suffice: Could a state authorize its courts to adjudge criminal cases without ever seeing the defendant, simply on the basis of his confession of judgment presented by a police officer or by a prosecutor? Again the answer is obviously no, despite the potentialities of such a procedure for reducing the congestion of court calendars and the costs of the administration of criminal justice. Such a procedure is so inherently subject to abuse and so inconsistent with the solemn duty of the court to do justice that the mere suggestion of its adoption in the criminal area strikes one as absurd. Why then is it an appropriate device in the adjudication of civil cases? It is surely not because the employees and lawyers of collection agencies and finance companies, etc., are less likely to abuse the court's trust than our police and our public prosecutors. Nor is it because the police would have any greater opportunity to improperly obtain confessions of judgment. Though the police have greater coercive power over a man in their custody, by the same token they have infinitely less opportunity to deceive. The police could not hope to convince a person who had been subjected to extensive interrogation to sign a statement "for our records" as the collection agency convinced amicus Babcock to do. Finally, even were they no more scrupulous than collection agencies, our police must contend with the fact that prisoners will eventually appear before a disinterested judge who will inquire into the circumstances in which they signed any statement the prosecution relies upon. Those who take judgment by confession, on the other hand, need have no similar concern since the

very purpose of such a document is to preclude appearance of the civil defendant before a disinterested judge.

It may be suggested that a confession extinguishes no more rights than does a guilty plea or a default in a civil case. But neither a guilty plea nor a default may occur without an opportunity for a hearing.[6] As a practical matter, judgment by default is justifiable within due process because it is an absolute necessity to the functioning of the system of civil justice. There exists no mechanism to compel civil defendants to appear and make a plea. If a default did not operate

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6. As New York's highest court said in refusing Pennsylvania cognovits full faith and credit:

> "When contrasted with default or consent judgments, the harshness and unjudicial-like procedure of the cognovit judgment is exposed as egregious. Prior to rendition of a default judgment, process must have been served so that the debtor is made aware of the pending action, and the plaintiff must have filed a complaint pleading a good cause of action [citation]. The contrast is even greater with respect to consent judgments. A judgment by consent as an agreement between the parties at the commencement of an action upon the terms of the judgment is a product of contemporaneous bilateral action." Atlas Credit Corp. v. Ezrine, 25 N.Y.2d 219, 303 N.Y.S.2d 382, 288, 215 N.E.2d 474 (1969).

very purpose of such a document is to preclude appearance of the civil defendant before a disinterested judge.

It may be suggested that a confession extinguishes no more rights than does a guilty plea or a default in a civil case. But neither a guilty plea nor a default may occur without an opportunity for a hearing.[4] As a practical matter, judgment by default is justifiable within due process because it is an absolute necessity for the functioning of the system of civil justice. There exists no mechanism to compel civil defendants to appear and make a plea. If a default did not operate

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[4] See [illegible] court said [illegible] [illegible] full faith and credit:

> When confronted with default or consent judgments, the consequent and judicial-like procedure of the cognovit judgment is exposed as [illegible]. Prior to rendition of a default judgment, it must [illegible] been served so that the debtor is made aware of the pending action, and the plaintiff must have filed a complaint alleging a good cause of action [illegible]. The [illegible] [illegible] with [illegible] consent judgments [illegible] consent as an [illegible] between the parties [illegible] settlement of an action upon the merits of the [illegible] ground of con[illegible] collateral action.

Atlas Credit Corp. v. Ezrine, 25 N.Y. 2d 219, 303 N.Y.S. 2d 382, 250 N.E. 2d 474 (1969).

to assure judgment for plaintiff, every civil defendant would find it cheaper and more convenient to default than to appear, no matter how air-tight his defense.

We recognize that sometimes a default may occur though a defense exists because the defendant is indigent and unable to present it without counsel. Once again, however, default under these circumstances satisfies due process because no other practicable alternative exists. The Constitution has never been interpreted to require states to provide counsel for the indigent civil defendants. In the absence of such a requirement, and of a default judgment procedure, indigents would be wholly exempt from civil justice.[7]

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7. Both default and confession involve the possibility that a judgment can be rendered which would not have been rendered had the defendant been advised by counsel at a certain crucial point. The appropriateness of this in the case of a default merely accentuates the difference between a default and a confession. A default is not a waiver, but rather a foreclosure of rights by standing on them. A man may lose rights and defenses of which he is ignorant by inaction and/or inattention. But a waiver consists in the relinquishment only of known rights. Cf. Johnson v. Zerbst, 304 U.S. 458 (1939). A waiver is a gratuity and a gratuity, being a matter of intention, grants only those things which the grantor had in mind when he executed it. To the extent that the grantor was ignorant of his rights, he could not give them away.

In contradistinction, confession of judgment is in no way essential to the operation of civil justice -- as is demonstrated by the fact that confession does not exist in many states and is severely restricted in many others.[8] The state in recognizing confessions has unnecessarily adopted a procedure which maximizes all the dangers, problems and faults which have been so carefully minimized in connection with defaults. A default is taken under the supervision of a neutral court, after notice which at least acquaints the defendant with his need for advice and allows him to approach the court clerk for some information as to what is happening to him. A confession is taken under the supervision of the adverse party's employees, they alone being available to answer any questions which might be asked. A default occurs with reference to specific causes of action for specific sums concerning specific transactions. A confession is a general license to take judgment for an unspecified sum on the basis of a future default which the defendant will have no opportunity to explain or justify. Finally, a party filing a complaint is deterred from either intentional or negligent misstatement by the possibility that the defendant

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8. Cf. Hopson, "Cognovit Judgment: An Ignored Problem of Due Process and Full Faith and Credit," 29 U.Chi.L.R. 111, 126-136 (1961). Professor Hopson finds that, "...only Illinois, Pennsylvania and Ohio specifically allow for and do not, in some way, restrict cognovits. [These states] stand in splendid isolation..." (131) Of course limited confession still exists in some states as it does in California.

may secure counsel either on a fee or on a pro bono basis. A party filing a confession is constrained by no such consideration.

The waivers involved in a confession of judgment are ineffective for the same reasons that the ex post facto clause and the prohibition of cruel and unusual punishment cannot be waived: Such waivers serve no legitimate purpose of the judicial process. The only possible legitimate judicial interest which confession could serve is reducing congested court calendars through the non-appearance of those who have no defense or who wish to present none. But the law forces no man to appear in court. Those who do not wish to present a defense need not do so, and judgment will go by default. Concededly, there may be some few persons who, but for a confession, would go to the expense of presenting a sham defense in hopes of either deceiving the court or wearing the plaintiff down. But that danger is inherent in a system of due process which requires that every defendant have an opportunity to speak before judgment is taken against him. As a danger it scarcely merits comparison with that of intentional or negligent deception by a plaintiff who knows that the defendant will have no opportunity to speak in his own defense.

II. A CONFESSION OF JUDGMENT PROCEDURE DOES NOT PROVIDE SUCH EVIDENCE OF KNOWING AND VOLUNTARY RELINQUISHMENT AS IS NECESSARY TO A WAIVER OF VITAL DUE PROCESS RIGHTS.

Assuming, arguendo, that the opportunity for a hearing may be waived at all, the question becomes whether confession can constitute an effective vehicle for such waiver. Courts "do not presume acquiescense in the loss of fundamental [constitutional] rights."[9] Indeed they will "indulge every reasonable presumption against [such] waiver..."[10] In consequence, the burden of proof must always be borne by the party alleging the waiver.[11]

In the context of the due process clause, waiver consists in "the intentional relinquishment of a known right

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[9] Ohio Bell Telephone Co. v. Public Utilities Commission, 301 U.S. 292, 307 (1967), Johnson v. Zerbst, 304 U.S. 458, 464 (1938).

[10] Aetna Insurance Co. v. Kennedy, 301 U.S. 389, 393 (1937), Johnson v. Zerbst, supra.

[11] Buder v. Fiske, 174 F2d 260 (8 Cir.1949), Garvey v. Blatchford Calf Meal Co., 119 F2d 973 (7 Cir.1941), Madsen v. Travelers Insurance Co., 52 F.2d 75 (8 Cir.1931), and cases there cited.

or privilege." Johnson v. Zerbst, 304 U.S. 458, 464 (1938) (emphasis added).[12]

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[12]This classic definition, though pronounced in a case concerning the rights of the criminally accused, appears in virtually every succeeding discussion of waiver both in connection with other constitutional rights and with statutory, common law or contract rights. Cf. Curtis Publishing Co. v. Butts, 388 U.S. 130, 143 (1967) (First Amendment rights), Aetna Insurance Co. v. Kennedy, 301 U.S. 389 (1937) (Seventh Amendment right to trial by jury in civil cases), Ohio Bell Telephone Co. v. Public Utilities Commission, 301 U.S. 292 (1937) (Due process rights in rate-fixing hearing), VanBourg v. Nitze, 388 F.2d 557 (D.C.Cir.1957) (Statutory rights in administrative hearing process), Chambers & Co. v. Equitable Life Assurance Co., 224 F.2d 338 (5 Cir. 1955) (Contract rights), Helvering v. Ethyl D Co., 70 F.2d 761 (D.C.Cir.1934) (Statute of limitation governing liability for back taxes). See generally 28 Am.Jur. 2d 836, et seq. and 92 C.J.S. 1041, et seq. See also Barber v. Page, 390 U.S. 17 (1968), Application of Gault, 387 U.S. 1 (1967), Fay v. Noia, 372 U.S. 391 (1963), Albert v. Joralemon, 271 F.2d 236 (9 Cir.1959), Equitable Life Assurance Soc. of U.S. v. Mercantile Commerce Bank and Trust Co., 143 F.2d 397 (8 Cir.1944), Everhart v. State Life Ins. Co., 154 F.2d 397 (7 Cir. 1946), State Farm Mut. Auto Ins. Co. v. Retsch, 261 F.2d 331 (10 Cir.1959), Cook v. Commercial Cas. Ins. Co., 160 F.2d 490 (4 Cir.1947).

A. NATURE OF THE ERRORS BELOW

To be effective any waiver must meet two tests: (1) The party must have understood that he was waiving something (i.e., that his act was a waiver); and (2) The party must have understood what he was waiving.[13] Though the court below held that some confessions may not meet the first test,[14] it took no cognizance whatever of the second test.[15] Moreover, it is our contention that the court below failed to recognize an entirely different issue, the inconsistency of confessions with the individualized scrutiny which is prerequisite to judicial acceptance of a waiver of basic due process rights.[16]

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[13]Because we are primarily concerned with the validity of non-cognovit confessions, we do not separately deal with a third requirement: That the waiver was free and voluntary. The issue of whether a waiver in an adhesion contract can be truly voluntary is dealt with in appellants' brief and the amicus brief of the National Consumer Law Center.

[14]See discussion at subsection D of this Part.

[15]See discussion at subsections B and C of this Part.

[16]See discussion at subsection E of this Part.

Finally, a single uniform error permeates every aspect of the opinion below. That error is the insistence that the plaintiffs factually demonstrate the ineffectiveness of the waiver as to at least a substantial proportion of each of the sub-classes perceived by the court below. On the contrary, however, it is the state's duty to establish a procedure which effectively attempts to assure acceptance of only such waivers as were made knowingly, voluntarily and with untrammelled volition. Had they proven only the bare possibility that some cognovits represented invalid waivers, and that Pennsylvania nevertheless recognized them without any examination whatever, plaintiffs would have made out a prima facie case. It must be remembered that the very purpose, as well as the operation, of confession of judgment is to avoid judicial scrutiny. To justify such a procedure, it was up to the defendants to show not that some, or even most, of the waivers honored without scrutiny were constitutionally effective, but that all of them were. This was not and could not be shown, first, because there is no way short of scrutiny to determine what proportion of confessions of judgment meet constitutional requirements; and second, because the probability is that a large proportion of confessions do not.

B. A CONFESSION CANNOT PROVIDE FOR WAIVER OF AFTER-ARISING RIGHTS AND DEFENSES SINCE THE WAIVING PARTY COULD HAVE NO KNOWLEDGE OF SUCH WHEN HE EXECUTED IT.

A party can waive only those rights or defenses which he knows himself to have. It is hornbook law that one cannot be held to anticipate and understand rights which are not yet in existence and that, therefore, such rights cannot be waived.[17]

Applying those principles to the instant case, it is self-evident that the executor of a confession of judgment cannot have anticipated rights or defenses which arise subsequent to its execution.

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[17] 28 Am.Jur.2d 839-840, 92 C.J.S. 1055-1060; Curtis Publishing Co. v. Butts and Ohio Bell Telephone v. Public Utilities Commission, supra. While the lack of knowledge involved in Curtis stemmed from the fact that the rights involved there had not yet been enunciated by this Court, the principles of that case seem equally applicable where the rights are unknown because the facts from which they arose have not yet occurred. Ohio Bell Telephone is even closer since it involved the contention that a company had waived its rights by failing to object at a rate fixing hearing to subsequent confidential consideration by the Commission of evidence not introduced at the hearing. This Court rejected that argument at p.307 of 301 U.S. with the following comment: "As there was no warning of such a course, so also there was no consent to it."

Were every confession of judgment effectuated contemporaneously with its execution this might not be an objection. But a cognovit executed in a contract cannot in good faith be effectuated until something colorably resembling a default occurs--an event which may not take place for months or even years.[18] A similar time lag may exist even where the confession is taken by a collection agency after the default has occurred, as in the cases of amici Babcock and Nunez. The agency might delay filing the confession as part of an agreement to accept installment payments, or simply because it wishes to defer risking court costs until the debtor obtains employment whereupon his wages can be garnished.[19]

In the period between the execution of the confession and its filing facts may arise which present potential defenses to the obligation. Without attempting an exhaustive compilation of such defenses we would suggest the following: (1) Complete or partial paying off of the obligation by the defendant; (2) Seller's breach of contract by failure to deliver the goods or services; (3) Timely rescission upon discovery of hidden defects in the goods or services; (4) Seller's breach of warranty by failing to correct defects in the goods or services; (5) Extinguishment of the

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[18] In some states a confession can be filed immediately after a cognovit is signed, but judgment and execution must await a subsequent pleading alleging default.

[19] Although executed on Jan.20, 1971, amicus Nunez's confession has never been filed.

obligation by a statute of limitations; (6) Subsequent conduct by the seller or collection agency which gives rise to a set-off, counter-claim or cross-complaint;[20] (7) Unauthorized practice of law by the collection agency;[21] (8) Filing of the action in a court which lacks jurisdiction of it.[22]

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[20]Under California law, any set-off or claim related to the transaction must be stated in a counter-claim or cross-complaint filed with the defendant's answer. Cal.Code of Civ.Proc. §439. Plaintiff's taking of judgment by confession would presumably extinguish any such counter-claim.

[21]Cal.Bus.and Prof.Code §6947.2. The Sacramento County Superior Court has recently held that unauthorized practice of law constituted a good defense to a suit by a collection agency and has issued a class preliminary injunction on defendant's counter-claim. Northwest Creditors Service v. Chapman, No.196863 (1970).

[22]California's Unruh Retail Installment Sales Act's venue provision is jurisdictional. 51 Opinions of the California Attorney General 179 (1969). It is not unknown in California for a collection agency to adopt a deliberate pattern and practice of filing cases in the wrong venue thereby making more difficult the debtor's appearance to defend or claim exemption from wage garnishment. Amicus CRLA recently obtained a very handsome settlement in a class action raising this issue. De La Rosa v. Credit Bureau of Santa Clara County, No.7773, San Benito County Superior Court (execution terminated against class members, named plaintiff obtaining $2200 actual and punitive damages, $1400 discovery and other court costs).

Admittedly, a subsequent defense will not arise in every case in which a confession of judgment is filed--probably not even in most such cases. But that is irrelevant. The confession of judgment procedure can constitutionally rest only upon the presumption that in all cases the defendant knew, and intended to waive, all his rights and defenses. The confession of judgment procedure treats alike those cases in which the defendant could not have waived his defenses because they arose only subsequently and those in which no subsequent defenses arose. It provides no mechanism for differentiating these two sets of cases, nor would the procedure suggested by the court below suffice. That procedure entails merely investigating whether the defendant knew what a confession of judgment was when he signed it. But in order to determine whether any defenses arose subsequent to the execution of the confession it would be necessary either to appoint counsel for the defendant or in some other way have a legally competent person scrutinize the course and performance of each contract.

C. THE CONFESSION PROVIDES NO EVIDENCE THAT THE WAIVING PARTY KNEW AND FULLY UNDERSTOOD THE RIGHTS AND DEFENSES AVAILABLE TO HIM AT THE TIME HE EXECUTED IT.

As a confession may involve loss of rights and defenses which arise after its execution, so also may it involve loss of rights or defenses then extant but of which the signatory had no knowledge. The law of consumer transactions and collection is

difficult even for an attorney to understand. It involves knowledge of, and familiarity with, trade practices and the effect upon them of the common law and of statutes themselves highly complex which confusingly and intricately interact with one another. The Federal-Truth-In-Lending Act, and the extensive regulations which have been adopted under it, make some transactions illegal outright and limit others.[23] The Federal Trade Mark and Trade Name Act of 1915 would affect other

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[23] 15 U.S.C. 1601 et seq. and 12 C.F.R. 226.1, the so-called Regulation Z.

Indeed it would appear that amicus Nunez may have a Truth-in-Lending defense to the confession he signed in favor of H.P.-Sears. The terms noted on the fact of the confession (See Exh. B) include an agreement to pay off the supposed obligation in more than four installments. Although collection practices in general are not covered by the Truth-in-Lending Act, Regulation Z provides for a right to rescind and for specific disclosure of the same with regard to any collection arrangement involving more than four installments. Federal Reserve Board Letter No. 328 (May 20, 1970), 4 CCH Consumer Credit Guide $30,383.

The act also provides a right of rescission as to consumer credit transactions in which a security interest is retained or acquired in any real property used as a residence by the consumer. The Federal Reserve Board has interpreted this to apply

(cont'd next page)

transactions. In addition many states have enacted statutes more or less comprehensively governing consumer transactions, and virtually all states have some limitation of usury. For instance, most California retail transactions are governed by the Unruh Retail Installment Sales Act.[24] Automobile transactions are further governed by California's Rees-Levering Act.[25]

Collection agency practices are governed by the Collection Agency Licensing Act,[26] the regulations promulgated under it[27] and most particularly the

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to cognovits and confessions:

> "[Since they]...have the effect of depriving the obligor of the right to be notified of a pending action and to enter a defense in a judicial proceeding <u>before</u> judgment may be entered or recorded against him, such clauses and provisions in those states are security interests under §226 (z)."--Board Interpretation, May 26, 1969, 34 Fed.Reg. 8698 (emphasis in original)

[24] Cal.Civ.C.§1801, <u>et seq</u>.

[25] Cal.Civ.C.§2981, <u>et seq</u>.

[26] Cal.Bus. Prof.§6850, <u>et seq</u>.

[27] 16 Cal.Adm.C. §600, <u>et seq</u>.

prohibition against unauthorized practice of law by a collection agency.[28] Finally, California law makes voidable all transactions which occur as a result of certain specified misleading or otherwise unfair advertising or trade practices.[29]

It should be evident that few, if any, laymen will be conversant with the defenses with which such legislation may invest them.[30] It is self-evident that a confession of judgment where such defenses exist operates as a license to violate the law and that, if generally allowed, confessions in such circumstances would wholly nullify such salutory legislation. It is

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[28]Cal.Bus.& Prof.C.§6947

[29]Consumers Legal Remedies Act, Cal.Civ.C. §§1750 et seq.

[30]Thus, for instance, amicus Nunez did not know that his indigency constitutes a full and complete defense to the county hospital bills to which he confessed judgment in Sear's behalf. Cal.Welf.& Inst. Code §17300, County of Santa Barbara v. Monical, 10 C.A.3d 249, 88 Cal.Rptr. 717 (1970). Nor did he know that, by law, such debts can be litigated only by the county's legal officers and that only upon a specifically alleged and proven request by the county board of supervisors. See discussion at n. 6 of Interest of the Amici. By the same token, amicus Babcock did not know that California law absolves her of the debts of her deserting husband with which Sears tried to charge her. See discussion at n. 3 of Interest of Amici.

no answer to say that the confession of judgment is taken as part of a contract for which there is consideration.[31] For the very purpose of the consumer legislation here in question was to prevent the execution of contracts containing certain provisions, or under certain circumstances. The addition of a confession of judgment clause to such contracts exaccerbates rather than rectifies the evils which the legislation sought to obviate.[32]

D. LAYMEN, AND PARTICULARLY THE POOR, MAY NOT UNDERSTAND WHAT A CONFESSION IS AND/OR THAT BY SIGNING IT THEY ARE WAIVING RIGHTS

Confession of judgment is an abstruse legal concept, the nature and consequences of which are clearly beyond the knowledge of the ordinary layman. Nor is the language of a confession of judgment clause likely to provide much enlightenment to its untutored reader. It can not even be

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[31] This statement would, in any case, not be applicable to the post-contract confessions executed by amici Babcock and Nunez.

[32] Once again, we recognize that in many confession of judgment cases there will be no defense available, whether extant at the time the confession was executed or arising afterward. As previously suggested, whether or not a defense actually exists in any particular case is irrelevant because the procedure of a confession is to accept all waivers heedless of the existence of any unknown defense. See discussion at p. 28 supra.

read by those who, like amici Babcock and Nunez and many other poor persons, are illiterate, functionally illiterate, literate only in another language, or have grave reading problems.[33]

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[33]Attached as Exhibit A to this brief is the sworn affidavit of Frederick B. Gillette, Director of the Santa Clara County California Welfare Department which was filed April 5, 1971, in support of enforcement proceedings in Wheeler v. Montgomery, C.A. No.48303 (N.D.Calif.1969). In that affidavit Mr. Gillette discusses the reading and writing skills of a large proportion of welfare recipients.

The Wheeler case concerned the right of welfare recipients to a hearing prior to termination of their benefits. Its companion case before this Court, Goldberg v. Kelly, 397 U.S. 254 (1970), held that a procedure which allows welfare recipients to submit only written (but not oral) objections to termination could not provide an adequate hearing. In so holding, this Court commented:

> "Written submissions are an unrealistic option for most recipients who lack the education attainment necessary to write effectively and who cannot obtain professional assistance."

The implications of that statement for the present case are obvious.

In the absence of counsel, a person who is unclear as to what a confession is would naturally tend to make inquiries of the collection agency's employees--as, for instance, did amicus Nunez. But such employees are themselves laymen who may not understand what a confession is and who, in any case, owe first loyalties to their employers. Any advice they give will predictably tend to be either partisan or misleading, or both. Indeed, all that amicus Babcock was told was that "this is for our records;" while the Court below found that "the only explanation given to signers of judgment notes was that they were signing 'a judgment note.'" 314 F.Supp. at 1097-1098. It is not strange, therefore, that neither of the amici knew what they were doing when they signed the confession of judgment.

These circumstances seem to cry out for the application of the rule that courts "indulge every reasonable presumption against waiver of constitutional rights."[34] Presuming that a layman signed a confession out of ignorance is more than just a "reasonable" alternative to presuming that he did so knowingly. This is particularly true in non-cognovit cases, those wherein the confession of judgment is entered into after performance of a unilateral contract has already been rendered. As the lower courts have recognized, one factor to be considered in deciding whether a person knowingly

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[34] Aetna Insurance Co. v. Kennedy, 301 U.S. 389, 393 (1937), Johnson v. Zerbst, 304 U.S. 458, 464 (1938).

and understandingly waived his right is what he might have expected to gain and what he might have expected to lose by such waiver.[35] Common sense tells us that the fact that a man gains nothing and risks much by waiving his rights--in other words, that it is directly against his self-interest--is the strongest possible evidence that he did not understand what he was doing when he waived them.

What had amici Babcock and Nunez (not to mention the 130 odd other persons whose confessions of judgment H.P. Sears and Co. has filed in a ten month period) to gain by executing them? Certainly not better terms of consumer credit, since none of these confessions was executed as part of a consumer credit transaction. By the same token, the execution of confessions of judgment by these persons was

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[35] Higgins v United States, 207 F.2d 819 (D.C. Cir.1953) (defendant could not have understood that he could refuse to have his room searched since "no sane man who denied his guilt would actually be willing that policemen search his room for contraband which is certain to be discovered."), Cipres v. United States, 343 F.2d 95 (9 Cir.1965). (Since defendant's assertions of innocense were "certain to be exposed as false the moment the bags were opened" she could not have believed that she could refuse a request to search them.)

not a prerequisite to the availability of consumer credit to them. Nor was it consideration for Sears' forbearance to file a lawsuit since Sears has made no commitment (whether binding or not) as to this.[36] There is but one explanation for amici and those similarly situated signing confessions under these circumstances: They didn't know what they were doing. It follows that their purported waivers of their opportunity to appear was no waiver at all.

E. THE CONFESSION OF JUDGMENT PROCEDURE IS INVALID IN THAT IT DOES NOT PROVIDE FOR THE INDIVIDUALIZED SCRUTINY WHICH IS PREREQUISITE TO THE FINDING OF A WAIVER OF THE OPPORTUNITY TO APPEAR.

The court below determined that most, if not all, of the plaintiffs and those

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[36] Moreover, such forbearance would be of no value to the debtor at all because the confession of judgment makes the filing of a lawsuit unnecessary: the filing of a confession operates as a self-entering judgment, independent, and without necessity, of the filing of a lawsuit. Cf. Federal Deposit Insurance Corp. v. Steinman, 53 F.Supp. 644, holding that confessions are not "suits of a civil nature" as defined in the F.R.Civ.P.: "The right to enter judgment upon a confession contained in an instrument is a common law right which may be exercised without the necessity of suit, i.e., service of process, pleading and judicial determination."

they were found to represent did not understand what a cognovit was. On the basis of that finding it struck down Pennsylvania's confession of judgment laws as applied, but refused to enjoin their application to classes of persons which it deemed to be differently situated. Without delving into the validity of that factual conclusion, it is respectfully suggested that the learned judges misconceived the issue before them. That issue was not whether one or another plaintiff or person represented thereby had or had not understood what he was signing. Rather, at issue is whether Pennsylvania has adopted a constitutionally adequate procedure for determining whether there has been a waiver of the right to due process of law. It is submitted that, had the court below understood its mission in this light, it could only have resolved that question in the negative. For unquestionably the confession of judgment procedure does not provide for the kind of individualized scrutiny of waiver which is mandated by the decisions of this Court. That is true of confession of judgment as it is practiced in Pennsylvania, in California or anywhere else, for the whole purpose of confession of judgment is to avoid any and all judicial scrutiny. That purpose, however, runs squarely afoul of the constitutional principles governing waiver of constitutional rights. This Court held as long ago as Johnson v. Zerbst, supra, that every purported waiver of the opportunity to appear must be individually scrutinized to determine its constitutional sufficiency:

> "The determination of whether there has been an intelligent waiver of right to counsel must

> depend, in each case, upon the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused." (304 U.S. at 464)

Ten years later, this Court articulated in the following language the duties which a judge must perform before accepting a waiver of counsel and/or a guilty plea:

> "We have said: 'The constitutional right of an accused to be represented by counsel invokes, of itself, the protection of a trial court, in which the accused--whose life or liberty is at stake--is without counsel. This protecting duty imposes the serious and weighty responsibility upon the trial judge of determining whether there is an intelligent and competent waiver by the accused. To discharge this duty properly in light of the strong presumption against waiver of the constitutional right to counsel, a judge must investigate as long and as thoroughly as the circumstances of the case before him demand. The fact that an accused may tell him that he is informed of his right to counsel and desires to waive this right does not automatically end the judge's responsibility. To be valid

> such waiver must be made with an apprehension of the nature of the charges, the statutory offenses included within them, the range of allowable punishments thereunder, possible defenses to the charges and circumstances in mitigation thereof, and all other facts essential to a broad understanding of the whole matter. A judge can make certain that an accused's professed waiver of counsel is understandingly and wisely made only from a penetrating and comprehensive examination of all the circumstances under which such a plea is tendered."[37]

This requirement of individualized examination is far more necessary to determine volition and understanding in the case of a confession of judgment than in a waiver of counsel, or even a guilty plea.[38]

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[37] Von Moltke v. Gilles, 332 U.S. 708, 723-724 (1948) (emphasis added; footnotes omitted.)

[38] Recognizing that Johnson and Von Moltke are criminal cases, it is nevertheless true that the consequences of a waiver of due process rights in a civil case may be every bit as severe or even more so. Moreover, the standards for waiver of constitutional rights set out in Johnson have been uniformly applied to all waivers, whether civil or criminal in nature. See n.12, supra.

Such waivers are made orally in open court in the presence of a disinterested judge under circumstances which make immediate physical or mental coercion or overbearing virtually impossible. Without any examination whatever, the judge hearing them would have at least some idea of the defendant's education, whether he speaks English, his innate mental faculties and his sobriety.[39] As has been previously suggested, a confession of judgment is so inherently subject to abuse as to make imperatively necessary the kind of detailed examination required by Von Moltke, Johnson, and Sanders, supra. Since the very purpose of confession of judgment is antithetical to this Court's requirement that constitutional waivers be individually scrutinized, confession is necessarily inconsistent with due process of law.

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[39] cf. Sanders v. United States, 373 U.S. 1.

CONCLUSION

For the foregoing reasons, the judgment of the District Court should be reversed.

Dated: June 2, 1971.

Respectfully submitted,

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JOHN A. CHILDERS
DAVID P. SCHWARTZ
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of Ventura County
631 East Cooper Rd.
Oxnard, Ca.

By: DON B. KATES, JR.

EXHIBIT A

AFFIDAVIT

STATE OF CALIFORNIA)
) ss.
COUNTY OF SANTA CLARA)

I, Frederick B. Gillette, being duly sworn, depose and say: I am presently and for the past six years have been Director of the Santa Clara County Welfare Department. In that capacity I have had occasion to observe and deal with hundreds of welfare recipients and to supervise social workers who deal with thousands.

Many welfare recipients are completely illiterate and many of the rest are "functionally illiterate." By functionally illiterate I mean that while they can painstakingly read and write their names or fill out very simple forms, anything more is completely beyond them. They do not read regularly for business or pleasure and neither reading nor writing are a normal part of their everyday lives. They are incapable either of expressing or understanding in the written word concepts and ideas which might be perfectly clear to them if expressed orally.

Some small number of, but by no means all, welfare recipients are either mentally retarded or are significantly below average intelligence. Even where these recipients do read and write on a level above functional illiteracy, they are incapable of understanding or of easily comprehending and dealing with abstractions and concepts like rights, privileges, duties and responsibilities.

Our "Notice of Action" form (which is used in every instance of a cut-off of welfare grant to inform the recipient thereof) is designed to be as simple as possible; in using and filling out the form, we attempt insofar as possible to describe the action taken simply and concisely. Nevertheless, it has been our experience that welfare recipients often do not understand what the notice of action form is, what specific action was taken with

regard to them, what the reasons for the actions were, or what rights of appeal they have with regard to the action taken. For this reason the State Welfare Department hearing officials have often accepted appeal requests which said little or nothing more than (in effect): "My aid has been cut off and I want it back." But a recipient who does not know this, and who does not know on what basis action was taken against him or how to express his or her disagreement with that action, would be inclined simply to forego his appeal rights out of frustration and helplessness. Another consideration militating against exercise of the appeal rights is that the very idea of appeal is antithetical to the concepts which many recipients entertain of the welfare system and their relation to it. All too often, recipients are unable to understand that they are entitled to welfare under Federal and State law. Analogizing welfare to private charity, they believe that their benefits exist at sufferance of the officials who distribute them and that they have no right to complain against any action, however arbitrary.

Dated this 7th day of April, 1971.

Frederick B. Gillette
FREDERICK B. GILLETTE

Subscribed and sworn to before me
this 7th day of April, 1971.

Carol J. Lambert
NOTARY PUBLIC

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EXHIBIT B

(SPACE BELOW FOR FILING STAMP ONLY)

RICHARD HOSKING
ATTORNEY AT LAW
1403 - 18TH STREET
POST OFFICE BOX 2107
BAKERSFIELD, CALIFORNIA 93303
TELEPHONE 327-0481

Payments of 20.00 per month
Beginning February 20, 1971
Further payment can not be made
Please call 325-5981 ask for
Ramona Griffith

Attorney for Plaintiff

IN THE MUNICIPAL COURT, BAKERSFIELD JUDICIAL DISTRICT

COUNTY OF KERN, STATE OF CALIFORNIA

- - 0 - -

HERBERT P. SEARS CO., INC. a corporation Plaintiff vs MARIO NUNEZ Defendants	NO. CONFESSION OF JUDGMENT

COMES NOW _____

and confess(es) and agree(s) that judgment may be entered against him/her/them in the amount of $ ~~968.31~~ 946.59 , with interest thereon at the legal rate from date, which is the amount justly due to and duly assigned to HERBERT P. SEARS CO., INC., by virtue of the account(s) that follow(s). I/we hereby renew and reacknowledge the following indebtedness and waive the provisions of the applicable statute of limitations as of this date according to the California Code of Civil Procedure Sections 360 and 360.5.

Said accounts are due in the amount and for the nature of and consideration for the debt set next after the name(s) of the assignor(s) below:

ASSIGNOR	DUE FOR:	PRINCIPAL:
Fern General Hospital	services rendered(? seats)	$ 667.00
~~Pablo Vieira~~	~~services rendered~~	~~23.72~~
Donahue & Goodwell	services rendered	278.79

TOTAL $ 946.55

DATE

HOCKING
AT LAW
H STREET
BOX 2587
FIELD,
A 93303

STATE OF CALIFORNIA }
COUNTY OF KERN } SS

being sworn, says: that he/she/they is/are the Defendant(s) in the above entitled action; that affiant(s) has/have read the foregoing confession of judgment, renewal and reacknowledgment of indebtedness, and waiver of the statute of limitations and know(s) the contents thereof, that the same is true of his/her/their own knowledge, except as to the matters which are therein stated on information or belief, and as to those matters, he/she/they believe it to be true. We hereby acknowledge receipt of a copy of this document.

Subscribed and sworn to before me this

_____ 19_____

DOROTHY E. MESSENGER, Notary Public
California, Principal Office in Kern County

EXHIBIT C

RECEIVED

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FILED 3-9-71

BY [illegible] DEP. CLERK

RICHARD MOSCICKI
ATTORNEY AT LAW
1400 - 19th Street
Post Office Box 2009
BAKERSFIELD, CALIFORNIA 93303
Telephone 327-9401

Attorney for Plaintiff

IN THE MUNICIPAL COURT, BAKERSFIELD JUDICIAL DISTRICT

COUNTY OF KERN, STATE OF CALIFORNIA

- - o - -

HERBERT P. SEARS CO., INC.
a corporation

Plaintiff

vs

SOPHIA BABCOCK

Defendants

FEE PAID

NO. 60995

CONFESSION OF JUDGMENT

COMES NOW SOPHIA BABCOCK and confess(es) and agree(s) that judgment may be entered against him/her/them in the amount of $ 234.28 with interest thereon at the legal rate from date, which is the amount justly due to and duly assigned to HERBERT P. SEARS CO., INC., by virtue of the account(s) that follow(s). I/we hereby renew and reacknowledge the following indebtedness and waive the provisions of the applicable statute of limitations as of this date according to the California Code of Civil Procedure Sections 360 and 360.5.

Said accounts are due in the amount and for the nature of and consideration for the debt set next after the name(s) of the assignor(s) below:

ASSIGNOR	DUE FOR:	PRINCIPAL:
Dr. Irvin T. Lathrop	professional services rendered	234.28

TOTAL $ 234.28

X Sophia Babcock

DATE January 11, 1971

NOSKING
ATTORNEY AT LAW
5TH STREET
SUITE 600, EAST
PORTLAND,
OREGON 97209
227-8481

STATE OF CALIFORNIA }
COUNTY OF KERN } SS

SOPHIA BABCOCK

being sworn, says: that he/she/they is/are the Defendant(s) in the above entitled action; that affiant(s) has/have read the foregoing confession of judgment, renewal and reacknowledgment of indebtedness, and waiver of the statute of limitations and know(s) the contents thereof, that the same is true of his/her/their own knowledge, except as to the matters which are therein stated on information or belief, and as to those matters, he/she/they believe it to be true. We hereby acknowledge receipt of a copy of this document.

Sophia Babcock

Subscribed and sworn to before me this

June 11 1971

Dorothy E. Messenger

DOROTHY E. MESSENGER, Notary Public
California, Principal Office in Kern County

Dorothy E. Messenger
My Commission Expires June 5, 1973

April 9, 1991
A. Hulsh